

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:00CV32

H. DEAN ALLISON, *et al.*,)
Plaintiffs,)
This document pertains to:)
OLLEN J. FARRIS, and wife LINDA)
JOYCE FARRIS,)
vs.) **ORDER OF**
DISMISSAL
DANIEL CONSTRUCTION COMPANY,)
INC., *et al.*,)
Defendants.)

THIS MATTER is before the Court *sua sponte* to dismiss this action as to the Plaintiffs Ollen J. Farris, and wife Linda Joyce Farris, for failure to prosecute.

On July 8, 2008, the Court permitted Plaintiff's counsel to withdraw. **See Order, filed July 8, 2008.** In her motion to withdraw, Plaintiff's counsel advised the Court since the death of Plaintiff Ollen J. Farris in October 2005, no estate had been opened appointing a personal representative to pursue this action. **See Motion to Withdraw as Counsel of Record, filed June 16, 2008, ¶ 2.**

Additionally, counsel advised numerous contacts had been made with Mrs. Linda J. Farris, Plaintiff Ollen Farris' surviving spouse, and to Tonya Dysart, daughter of the Deceased, at which time the necessity for establishing an estate and the consequences of not doing so were explained. *Id.* ¶ 3. Counsel advised that Mrs. Farris indicated orally that she was no longer interested in pursuing this matter. *Id.* No response to the motion to withdraw was received from Mrs. Farris and the Court allowed counsel's motion. **See Order, supra.**

In the same Order, the Court directed Mrs. Farris to take appropriate action to prosecute the claims filed herein and to do so within 30 days of entry of the Order. To date, no response, either *pro se* or through counsel, has been received from Mrs. Farris. Therefore, the Court finds that the Plaintiff, by the inaction of his surviving spouse, has abandoned his claims herein, failed to prosecute this action, and the claims should be summarily dismissed. **See Fed. R. Civ. P. 41(b) (providing that a dismissal for failure to prosecute "operates as an adjudication on the merits"); Ballard v. Carlson, 882 F.2d 93, 95 (4th Cir. 1989) (sanctioning dismissal**

under Rule 41(b) for failure to respond to a specific directive of the Court).

IT IS, THEREFORE, ORDERED that the claims of Ollen J. Farris, and wife Linda Joyce Farris, against all Defendants herein are hereby **DISMISSED** in their entirety.

IT IS FURTHER ORDERED that the Clerk mail a copy of this Order to Mrs. Linda J. Farris, at the address of 1773 Harris Henrietta Road, Mooresboro, North Carolina, 28114.

Signed: August 20, 2008



Lacy H. Thornburg
United States District Judge

